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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 6 December 1996 from the Permanent Observer for Palestine to the United Nations Office at Geneva addressed to the Assistant Secretary-General for Human Rights

We request you kindly to submit this letter as an official document before the Commission on Human Rights in its upcoming fifty-third session, and provide Mr. Halenen, Special Rapporteur, with a copy of it.

(Signed): Nabil RAMLAWI
Ambassador
Permanent Observer for
Palestine to the United Nations

The Israeli High Court legitimizes torture against Palestinians

For the second time in less than 48 hours the Israeli High Court, the highest judicial body in Israel, issued a decision which legally legitimizes the use of physical violence during interrogation of Palestinian detainees.

On 14 and 17 November 1996, the Court issued decisions making it permissible for General Security Services (GSS) personnel to use "physical pressure" during their interrogations of Muhammad Hamdan from Beit Sira (near Ramallah) and Khadir Mubarak from Halhoul (near Hebron).

Muhammad Hamdan, arrested on 7 October 1996, was subjected to torture, including violent shaking, by GSS personnel. On 12 November, Hamdan's attorney appeared before the Israeli High Court and obtained an injunction preventing GSS personnel from continuing the use of physical pressure against Hamdan. However, following an appeal from the GSS, the High Court withdrew its injunction, affirming that "increased physical pressure", including violent shaking, which can cause death and brain damage, could be legally used against Hamdan during interrogation.

Khadir Mubarak, detained on 21 October 1996, and held in the interrogation section of Ashkelon prison, also appealed to the Israeli High Court to prevent the use of torture during his interrogation. On 17 November, the Court rejected the appeal and reaffirmed the use of physical violence against detainees.

The High Court justified the use of violence and torture, including violent shaking, because Hamdan and Mubarak were detained due to suspicions that they possessed information about expected suicide bomb attacks. Neither Hamdan nor Mubarak were arrested for their participation in a bomb attack or any activity of this kind.

The recent decisions of the High Court are considered dangerous and constitute a real threat to the lives of Palestinian detainees held in Israeli prisons. According to the ruling, GSS interrogators are provided legal backing to implement torture techniques which include violent shaking.

The Court's ruling exceeds the recommendations of the Landau Commission that provided for "moderate physical and psychological pressure", giving even greater freedom to Israeli interrogators in their use of torture. The Landau Commission, headed by Moshe Landau, the then head of the High Court in Israel, was formed to investigate the practices of the GSS due to reports of widespread torture in Israeli detention centres. The report, issued in 1987, concluded that it is permissible to use physical and psychological pressure against Palestinian detainees to obtain confessions, and also endorsed specific torture techniques and methods which were never released to the public. At the time of its release, the report evoked wide criticism from the international community, especially United Nations bodies and human rights organizations, due to its legalization and legitimization of torture. Notably, Israel is the only State in the world to enact or adopt such a decision.

The ruling further justifies the use of force, giving it legal value and legitimacy, despite the fact that the use of torture is prohibited in all cases according to international human rights standards.

Article 2, paragraph 2, of the United Nations Convention against Torture, which was adopted in 1984 and to which the Israeli Government is party, states that "no exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be involved as justification of torture".

In addition, the decisions of the Israeli Court are a grave breach of the Fourth Geneva Convention which states in articles 146 and 147 that Contracting Parties shall "enact any legislation necessary to provide elective penal sanctions for persons committing or ordering to be committed, any of the grave breaches of the present Convention" which includes, "wilful killing, torture or inhuman treatment".

The Israeli occupation authorities continue to detain more than 4,000 Palestinians in their prisons without trial, and using in a systematic way arbitrary detention against Palestinians who have all become subject to the torture that the Israeli High Court legitimized according to its before-mentioned decisions.